

### **REMARKS**

The Office Action dated May 18, 2009, has been received and carefully noted. The above amendments and the following remarks are being submitted as a full and complete response thereto.

Claims 1-11 and 13-33 were rejected. Claims 1, 3-11, 13-21 and 23-33 are currently pending in the above-identified application, with claims 1, 11 and 21 being independent. By this Amendment, claims 1, 11 and 21 have been amended. Applicant submits that no new matter is added. Applicant respectfully requests reconsideration and withdrawal of the rejections.

Claims 1, 11 and 21 have been amended to clarify that the sample slot defines an area being rectangularly-shaped in transverse cross section for receiving a sample tab that is rectangularly-shaped in transverse cross section. Support for this amendment is provided, for example, by Figure 4a.

#### **Rejection under 35 U.S.C. § 112, Second Paragraph**

Claims 1-11 and 13-33 were rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite with respect to the adaptation of the sample slot. Claims 1, 11 and 21 have been amended to clarify the shape of the sample slot. More particularly, claims 1, 11 and 21 have been amended to specify that the sample slot defines an area that is rectangularly-shaped in transverse cross section.

Reconsideration and removal of this rejection is respectfully requested in view of the foregoing comments and amendments.

### **Rejection under 35 U.S.C. § 103**

Claims 1-11 and 13-33 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 5,846,492, in view of U.S. Patent No. 5,459,677, Wehlburg, Greensil, Ozdemir, Sum, Despagne or Swierenga. Applicant has addressed this rejection by way of the foregoing amendments and the comments set forth below.

The cited references do not teach or suggest either individually or in combination the presently claimed spectroscopic apparatus, which includes a sample slot adapted to receive a sample tab being rectangularly-shaped in transverse cross section, and one or more than one upgraded primary calibration algorithm for one or more than one analyte, the one or more than one upgraded primary calibration algorithm in operative association with the spectroscopic apparatus and developed on the spectroscopic apparatus by combining some, or all of a calibration data set derived from a primary calibration set and obtained from one, or more than one other apparatus with additional data obtained from the spectroscopic apparatus, wherein the sample slot defines an area being rectangularly-shaped in transverse cross section.

Accordingly, the presently claimed apparatus is inventive in view of the cited references.

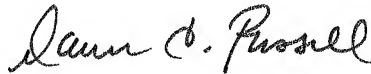
Applicant respectfully requests that that the rejection under 35 U.S.C. § 103(a) be withdrawn in view of the foregoing amendments and comments.

**CONCLUSION**

Applicant submits that the above-identified application is now in a condition for allowance, and favorable reconsideration and prompt allowance of these claims are respectfully requested. Should the Examiner believe that anything further is desirable in order to place the application in better condition for allowance, the Examiner is invited to contact Applicant's undersigned representative at the telephone number listed below to schedule a personal or telephone interview to discuss any remaining issues.

In the event this paper is not considered to be timely filed, Applicant respectfully petitions for an appropriate extension of time. Any fees for such an extension, together with any additional fees that may be due with respect to this paper, may be charged to Counsel's Deposit Account No. 01-2300, referencing Docket Number 026806-00014.

Respectfully submitted,



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